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7 | Attorneys for Defendants

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

12 WEI XIONG, )  
13 Plaintiff, )  
14 v. )  
15 MICHAEL CHERTOFF, Secretary of the )  
16 Department of Homeland Security; )  
17 EMILIO T. GONZALES, Director of )  
U.S. Citizen and Immigration Services; )  
ROBERT S. MUELLER, Director of )  
Federal Bureau of Investigations, )  
18 Defendants. )

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The Defendants hereby submit their answer to Plaintiff's Original Complaint for Writ in the  
Nature of Mandamus and Declaratory Judgment Under 28 U.S.C. §§ 1361 and 1331, 5 U.S.C. §§  
551 and 701 et seq.

23       1. Paragraph One consists of Plaintiff's characterization of this action, to which no responsive  
24 pleading is required; however, to the extent a responsive pleading is necessary, Defendants deny  
25 the allegation that they have improperly withheld action on the application for adjustment of status  
to Plaintiff's detriment.

## PARTIES

2. Defendants admit the allegations in Paragraph Two.

## ANSWER

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3. Defendants admit the allegations in Paragraph Three.
4. Defendants admit the allegations in Paragraph Four.
5. Defendants admit the allegations in Paragraph Five; however Defendants deny the FBI has led to complete Plaintiff's name check. The name check remains pending.

## JURISDICTION

6. Paragraph Six consists of Plaintiff's allegations regarding jurisdiction, to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Defendants deny that this Court has jurisdiction under any of the provisions cited in Paragraph Six.

## VENUE

7. Paragraph Seven consists of Plaintiff's allegations regarding jurisdiction, to which no responsive pleading is required.

## **EXHAUSTION OF REMEDIES**

8. Defendants deny the allegations in Paragraph Eight.

## **CAUSE OF ACTION**

9. Defendants admit the allegations in Paragraph Nine.

10. Defendants admit the allegations in Paragraph Ten.

11. Defendants are without sufficient information to admit or deny the allegations in Paragraph Eleven.

12. Defendants are without sufficient information to admit or deny the allegations in Paragraph Twelve.

13. Defendants admit the allegations in Paragraph Thirteen.

14. Defendants are without sufficient information to admit or deny the allegations in Paragraph Fourteen.

15. Defendants are without sufficient information to admit or deny the allegations in Paragraph Fifteen.

16 Defendants admit the allegations in Paragraph Sixteen

17. Defendants admit the allegations in Paragraph Seventeen.

## ANSWER

ANSWER  
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18. Defendants are without sufficient information to admit or deny the allegations in Paragraph Eighteen.

19. Defendants admit the allegations in Paragraph Nineteen.

20. Defendants deny the allegations in Paragraph Twenty.

21. Defendants deny the allegations in Paragraph Twenty-One.

22. Defendants deny the allegations in Paragraph Twenty-Two.

23. Defendants deny the allegations in Paragraph Twenty-Three.

24. Defendants are without sufficient information to admit or deny

24. Defendants are without sufficient information to admit or deny the allegations in Paragraph Twenty-Four.

(a) Defendants admit the allegations in Paragraph Twenty-Four subsection a.

(b) Defendants admit the allegations in Paragraph Twenty-Four subsection b.

(c) Defendants are without sufficient information to admit or deny the allegations in

#### Paragraph Twenty-Four subsection c.

25. Defendants deny the allegations in Paragraph Twenty-Five.

26. Defendants deny the allegations in Paragraph Twenty-Six.

27. Defendants deny the allegations in Paragraph Twenty-Seven.

## PRAYER

28. Paragraph Twenty-Eight consists of Plaintiff's prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny this paragraph.

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's complaint fails to state a claim upon which relief may be granted.

## **SECOND AFFIRMATIVE DEFENSE**

The court should dismiss the Complaint for lack for subject matter jurisdiction.

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ANSWER  
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1 WHEREFORE, Defendants pray for relief as follows:

2 That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's  
3 Complaint with prejudice; that Plaintiff takes nothing; and that the Court grant such further relief  
4 as it deems just and proper under the circumstances.

5 Dated: January 29, 2008

Respectfully submitted,

6 JOSEPH P. RUSSONIELLO  
United States Attorney

7  
8 /s/  
9 EDWARD A. OLSEN  
Assistant United States Attorney  
10 Attorneys for Defendants  
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